

A4
cont.

10. (New) 4-Chloro-2-(4-chloro-2,6-dimethyl-phenoxy)-3,6-dimethyl-pyridine.

REMARKS

A copy of Claims 1, 3 and 4, showing the amendments thereto is attached as an Appendix.

The Official Action of June 19, 2002 has been carefully considered and reconsideration of the application as amended is respectfully requested.

Applicant confirms the election of Claims 1-4 and notes that the restriction requirement has been made final. Applicant respectfully calls attention to the provisions of MPEP Section 821.03 and submits that, if and when a product claim is subsequently found allowable, withdrawn process claims which depend from or otherwise include all the limitations of the allowable product claim should be rejoined in this application. Applicant respectfully requests that the non-elected claims be held in abeyance until such time as a product claim has been allowed.

The specification has been amended to make specific reference to the earlier filed applications from which applicants claim priority in accordance with the requirement set forth in the Official Action at paragraph 6. It is respectfully submitted that applicants claim for priority from the subject applications was timely insofar as the present application was filed before November 29, 2000 and, in any event, a claim to priority from these applications was included in the Declaration filed October 4, 2000. The Examiner has noted in paragraph 7 of the Official Action that the Declaration makes reference to a filing date of U.S. Application

Serial No. 09/254, 387 of June 6, 1995, and contends that this is incorrect. Applicant respectfully disagrees and notes that the '387 application is a 371 of PCT/IB95/00437 and has the same filing date, i.e. the filing date of the international application. See MPEP Section 1893.03(b) ("An international application designating the U.S. has two stages (international and national) with the filing date being the same in both stages.") Accordingly, Applicant respectfully traverses the requirement at paragraph 7 of the Official Action for a new oath or declaration.

Claims 1-4 have been amended to remove the bases for the rejections under 35 USC 112, second paragraph appearing at paragraphs 9-14 of the Official Action. In particular, the groups which are recited as optionally containing one or two double bonds or triple bonds have been rewritten as, "hydrocarbyl" instead of "alkyl" to reflect what was inherent from the claims as filed. The rejection to Claim 3 appearing in paragraph 11 of the Official Action has been overcome by amending the claim in accordance with the description at page 29, lines 2-4 of the specification as filed. The moiety of "CH₃" has been amended to "CCH₃" as was intended (see penultimate line of original Claim 1 and line 20 of original Claim 3). The recitations of a narrower range within a broad range have been deleted. All informalities have now been corrected, and Applicant respectfully submits that all claims as amended are sufficiently definite to satisfy the dictates of 35 USC 112, second paragraph.

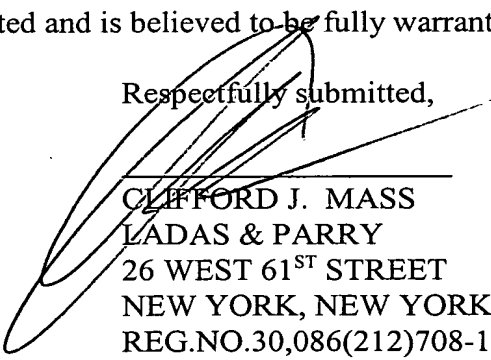
New Claims 9 and 10 have been added more completely to define the subject matter which Applicant regards as his invention. Claim 9 contains recitations from a narrower range formerly in the broader range recited in Claim 3. Claim 10 draws support from the specification as filed at page 127, line 20.

Claims 1-4 were rejected under 35 USC 102(a) as allegedly being anticipated by Chen WO 95/33750. Applicants respectfully note that the reference is the inventor's own publication and is not a publication of another as is required for rejection under 35 USC 102 (a). Applicant respectfully traverses the rejection on this basis.

Applicant also respectfully notes that the reference has a publication date of December 14, 1995. The present application, on the other hand, claims priority from a U.S. Application (USSN 09/254,387, now US Patent 6,316,631) that has an effective filing date of June 6, 1995, i.e. prior to the publication date of the cited reference. Moreover, the '387 application incorporates by reference the International Application (PCT/IB95/00439) whose WIPO Publication (WO 95/33750) is cited in the present rejection (see U.S. Patent 6,316,631, copy submitted herewith, at column 1, lines 18-21). Accordingly, insofar as the cited reference describes compounds that are alleged to anticipate compounds presently claimed herein, Applicant's parent application describes the same compounds and thus provides support for claims directed to such compounds. Accordingly, the present application can antedate the reference for claims directed to such compounds by virtue of an earlier effective filing date.

In view of the above, it is respectfully submitted that all rejections and objections of record have been overcome and that the application is in allowable form. An early notice of allowance is earnestly solicited and is believed to be fully warranted.

Respectfully submitted,



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APPENDIX

IN THE SPECIFICATION

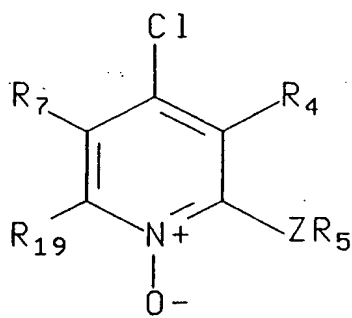
Please add the following before line 1 on page 1

This application is a continuation in part of Serial Number 08/741066 filed on October 30, 1996 (now issued as Patent No. 6,403,599) which claims benefit of 60/006,333 filed November 8, 1995, and is also a continuation in part of application Serial No 09/254,387 filed March 4, 1999 (now issued as Patent No. 6,316,631) which is the United States part of International Patent Application PCT/IB95/00437 which was filed on June 6, 1995.

IN THE CLAIMS

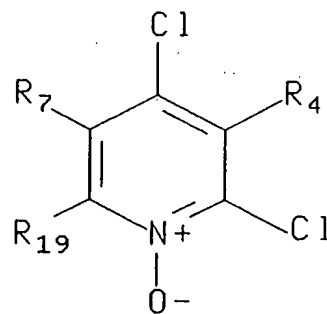
Please amend Claims 1, 3 and 4 to read as follows:

1. (Amended) A compound of the formula

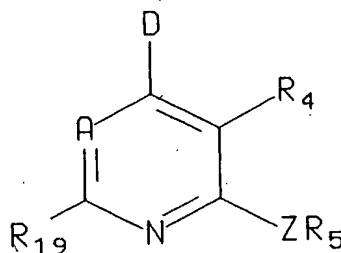


X

or



XI



IV

wherein R_7 is hydrogen, methyl, fluoro, chloro, bromo, iodo, cyano, hydroxy, $-O(C_1-C_4 \text{ alkyl})$, $-C(O)(C_1-C_4 \text{ alkyl})$, $-C(O)O(C_1-C_4 \text{ alkyl})$, $-OCF_3$, CF_3 , $-CH_2OH$, $-CH_2OCH_3$ or $-CH_2OCH_2CH_3$;

D is chloro, hydroxy or cyano;

R_{19} is methyl or ethyl;

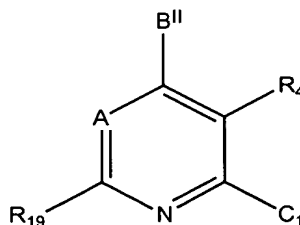
R_5 is phenyl or pyridyl and R_5 is substituted by two or three substituents independently selected from C_1-C_4 alkyl, chloro and bromo, except that no more than one such substituent can be bromo;

R_4 is hydrogen, C_1-C_4 hydrocarbyl [alkyl], fluoro, chloro, bromo, iodo, C_1-C_4 alkoxy, trifluoromethoxy, $-CH_2OCH_3$, $-CH_2OCH_2CH_3$, $-CH_2CH_2OCH_3$, $-CH_2OF_3$, CF_3 , amino, nitro, $-NH(C_1-C_4 \text{ alkyl})$, $-N(CH_3)_2$, $-NHCOCH_3$, $-NHCONHCH_3$, $-SO_n(C_1-C_4 \text{ alkyl})$ wherein n is 0, 1 or 2, cyano, hydroxy, $-CO(C_1-C_4 \text{ alkyl})$, $-CHO$, cyano or $-COO(C_1-C_4 \text{ alkyl})$ wherein said C_1-C_4 hydrocarbyl [alkyl] may optionally contain one double or triple bond and may optionally be substituted with one substituent selected from hydroxy, amino, $-NHCOCH_3$, $-NH(C_1-C_2 \text{ alkyl})$, $-N(C_1-C_2 \text{ alkyl})_2$, $-COO(C_1-C_4 \text{ alkyl})$, $-CO(C_1-C_4 \text{ alkyl})$, C_1-C_3 alkoxy, C_1-C_3 thioalkyl, fluoro, chloro, cyano and nitro;

A is N, CH or CCH₃ [CH_3];

and Z is O, NH, $N(CH_3)$, S or CH_2 , with the proviso that when A is CH or CCH_3 , then Z must be O or S.

3. (Amended) A compound according to claim 1 of the formula



wherein R_{19} is methyl or ethyl;

R_4 is hydrogen, C_1 - C_4 hydrocarbyl [alkyl], fluoro, chloro, bromo, iodo, C_1 - C_4 alkoxy, trifluoromethoxy, $-CH_2OCH_3$, $-CH_2OCH_2CH_3$, $-CH_2CH_2OCH_3$, $-CH_2OF_3$, CF_3 , amino, nitro, $-NH(C_1-C_4 \text{ alkyl})$, $-N(CH_3)_2$, $-NHCOCH_3$, $-NHCONHCH_3$, $-SO_n(C_1-C_4 \text{ alkyl})$ wherein n is 0, 1 or 2, cyano, hydroxy, $-CO(C_1-C_4 \text{ alkyl})$, $-CHO$, cyano or $-COO(C_1-C_4 \text{ alkyl})$ wherein said C_1 - C_4 hydrocarbyl [alkyl] may optionally contain one double or triple bond and may optionally be substituted with one substituent selected from hydroxy, amino, $-NHCOCH_3$, $-NH(C_1-C_2 \text{ alkyl})$, $-N(C_1-C_2 \text{ alkyl})_2$, $-COO(C_1-C_4 \text{ alkyl})$, $-CO(C_1-C_4 \text{ alkyl})$, C_1 - C_3 alkoxy, C_1 - C_3 thioalkyl, fluoro, chloro, cyano and nitro;

A is N, CH or CCH_3

B'' is $-NR_1R_2$, $-CR_1R_2R_{11}$, $-C(=CR_2R_{12})R_1$, $-NHCHR_1R_2$, $-OCHR_1R_2$, $-SCHR_1R_2$, $-CHR_2OR_{12}$, $-CHR_2SR_{12}$, $-C(S)R_2$ or $-C(O)R_2$;

with the proviso that when A is N then B'' and R_4 are defined, respectively, as B'' and R_4 are defined above and when A is CH or CCH_3 , then B'' is $-NR_1R_2$, $-NHR_1R_2$, $-OCHR_1R_2$ or cyano and R_4 is an electron deficient group [such as NO_2 , $-COO(C_1-C_4 \text{ alkyl})$, $-C(=O)CH_3$, $-COH$ or cyano].

4. (Amended) A compound according to claim 3, wherein B'' is $-NR_1R_2$ or $-NHCHR_1R_2$ and A is CH or CCH_3 [CH_3].